purchaser for value. The defendant collected the amount from the plaintiff's bank, which amount the plaintiff seeks to recover. *Held*, that the defendant is not entitled to the proceeds of the check. *North and South Wales Bank* v. *Macbeth*, 24 T. L R. 397 (Eng., H. of L., March 5, 1908).

For a discussion of this case in the Court of Appeal, see 21 HARV. L. REV. 214.

CARRIERS — CONNECTING LINES — LIABILITY OF INITIAL CARRIER FOR INJURIES OCCURRING ON CONNECTING LINES. — The defendant accepted the plaintiff's goods for transportation beyond its own line, receiving full payment and issuing a through bill of lading. The goods were injured while in the possession of a connecting carrier. *Held*, that the defendant is liable. *St. Louis, I. M. & S. Ry. Co.* v. *Randle*, 107 S. W. 669 (Ark).

A carrier's liability for injuries not occurring on its own line arises only by contract express or implied. Whether such a contract is to be implied from the circumstances of a particular shipment is properly a question for the jury. *Gray* v. *Jackson*, 51 N. H. 9. The present case, however, follows the English rule that, as a matter of law, mere acceptance of the goods for carriage beyond the carrier's line constitutes an implied contract of through carriage. In this country the greater distances and dangers, making the hardship to the carrier seem larger, apparently prevented its adoption generally; and, since the acceptance is obligatory, this rule is certainly too strict. *Cf. Nutting* v. *Conn. R. R.*, 1 Gray (Mass.) 502; *Van Santvoord* v. *St. John*, 6 Hill (N. Y.) 157. Nevertheless the shipper's difficulties, first in placing responsibility for a loss and then in suing in a distant state, demand that a through contract should be readily implied, especially as the carrier may to some extent limit his liability by express contract. Therefore the result in the present case, where a through rate was made and a through bill of lading issued, each in itself strong evidence of a through contract, seems correct. *R. R. Co.* v. *Pratt*, 22 Wall. (U. S.) 123.

CONFLICT OF LAWS — OBLIGATIONS EX DELICTO — RECOVERY FOR CARRIER'S FAILURE TO DELIVER. — The plaintiff delivered goods to the defendant carrier in Kansas for transportation to Massachusetts. The goods were destroyed in Kansas under circumstances rendering the carrier liable. The plaintiff sued in Missouri *ex delicto* for failure to deliver, and by the law of the forum, if an action was barred by the statute of limitations in the state where it arose, no action would lie. *Held*, that the right of action arose in Massachusetts and that the Kansas statute of limitations is inapplicable. *Merritt Creamery Co.* v. *Atchison, T. & S. F. Ry. Co.*, 107 S. W. 462 (Mo., K. C. Ct. App.).

It is generally recognized that a common carrier through whose fault goods are destroyed is subject to an action either *ex contractu* or *ex delicto*. *Denman* v. *Chicago, etc., Co.*, 52 Neb. 140. If the suit is *ex contractu*, the validity of the contract and the extent of the carrier's obligation should be governed by the *lex loci contractus*. See 10 HARV. L. REV. 168. But if the contract is broken, the right to damages is a cause of action arising at the place of performance, since it is there that the promisor breaks his contract. See 17 HARV. L. REV. 354. When sued in tort, however, the obligation of the carrier as well as its breach is governed by the law of the place where the acts complained of occurred. *Indiana, etc., Co.* v. *Masterson*, 16 Ind. App. 323. Had the plaintiff sued in contract for the breach, his cause of action would certainly have arisen in Massachusetts. *Curtis* v. *Delaware, etc., Co.*, 74 N. Y. 116. But the defendant is under a duty, apart from contract, to deliver. *Raphael* v. *Pickford*, 5 M. & G. 551. The cause of action founded on a breach of this duty also arose in Massachusetts, and the present case is sound in so holding.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — CONSTITUTIONALITY OF STATUTE AUTHORIZING SERVICE BY PUBLICATION ON CORPORATIONS. — A domestic corporation was served by publication according to Virginia Code, 1904, § 3225, which provides for publication of process once a week for four successive weeks in a newspaper, published in the state, in case no person who can be served for the corporation is in the county where suit is brought.

Held, that such service does not violate the federal Constitution. *Ward Lumber Co.* v. *Henderson-White Mfg. Co.*, 59 S. E. 476 (Va.).

For a discussion of the principles involved, see 21 HARV. L. REV. 453.

CONSTITUTIONAL LAW — LOCAL SELF-GOVERNMENT — STATE COMMISSIONER FOR THE ENFORCEMENT OF LIQUOR LAWS. — A statute authorized the appointment of a commissioner who should have power to exercise all the powers of the prosecuting attorneys in their respective counties in the enforcement of the state liquor laws. *Held*, that the functions essentially connected with officers named by the constitution can only be discharged by constitutional officers, and therefore this statute is unconstitutional. *Ex parte Corliss*, 114 N. W. 962 (N. Dak.).

For a discussion of the principles involved, see 15 HARV. L. REV. 848; 13 *ibid.* 441.

CONSTITUTIONAL LAW — POWER OF THE JUDICIARY — FEDERAL COURT ENJOINING STATE ATTORNEY-GENERAL FROM ENFORCING A STATE STATUTE. — The legislature of Minnesota fixed rates for the railroads of the state, and prescribed heavy penalties for each deviation therefrom. The federal circuit court enjoined the state attorney-general from proceeding under these statutes pending the decision of their constitutionality. He disobeyed the injunction, and the circuit court committed him for contempt. Alleging that, because of the Eleventh Amendment, the court was without jurisdiction, he instituted *habeas corpus* proceedings in the Supreme Court. *Held*, that, irrespective of the sufficiency of the rates, the statutes are unconstitutional, and the court has jurisdiction to enjoin the attorney-general from enforcing them. *Ex parte Young*, U. S. Sup. Ct., March 23, 1908. See NOTES, p. 527.

CONTRACTS — CONSTRUCTION — EXCEPTION OF HOLIDAYS FROM TIME ALLOWED BY CHARTER-PARTY FOR LOADING VESSEL. — By the terms of a charter-party the plaintiffs were to load the defendant's vessel "in seven weather working days (Sundays and holidays excepted)." For every day saved the plaintiffs were to be paid despatch money; for every day in excess they were to pay demurrage. They loaded the vessel in seven days, the work being continued through two holidays, and sued for despatch money for the two days saved. *Held*, that the plaintiffs can recover. *Nelson & Sons, Ltd.*, v. *Nelson Line, Liverpool, Ltd.*, 24 T. L. R. 315 (Eng., H. of L., Feb. 6. 1908).

This decision reverses that of the lower court, criticized in 21 HARV. L. REV. 217.

CORPORATIONS — ACQUISITION OF MEMBERSHIP — ASSESSMENTS FOR PRELIMINARY EXPENSES. — The plaintiff, receiver for a corporation, sued the defendant on an assessment. *Held*, that so far as the assessment is to pay expenses of organization the defendant is liable, even if the entire capital has not been subscribed. *Myers* v. *Sturges*, 123 N. Y. App. Div. 470.

It is undoubted law that in the absence of special provisions a corporation cannot recover the full amount on subscriptions to its stock unless the entire capital has been subscribed. *Peoria and Rock Island Ry.* v. *Preston*, 35 Ia. 115. In establishing a different rule for assessments to cover the preliminary expenses, the court relied on an earlier case which reached the same result, but in that case special provisions in the charter of the corporation were particularly noticed and seem sufficient to distinguish it from the present case. *Salem Mill Dam Corp.* v. *Ropes*, 6 Pick. (Mass.) 23; see also *Anvil Mining Co.* v. *Sherman*, 74 Wis. 226. In principle, the reasons upon which the general rule is based seem equally pertinent here. If a subscriber does not contract to pay the full price until all the stock is taken, it appears unwarranted to assume that he agrees to become liable for the preliminary expenses at an earlier time. The question turns solely on the proper construction of his promise, and he no more contemplates becoming liable for one kind of expenditure than for another.